not held responsible for his torts, his contracts or any other actions, is an inconsistency that the law should not be guilty of. The result of the Melber trial would seem to indicate that juries can be trusted to scrutinize carefully the defense of insanity. E. L.

LEGAL PROCEDURE AND LEGISLATION.

There is much criticism of the procedure of our courts nowadays, both in and out of the legal profession. It is alleged that too many cases are decided on technical questions relating to procedure, instead of on the merits of the case, and the complaint is often made that this is due to the legal profession clinging to old forms which are outworn and which should be simplified in accordance with the practical demands of the time. This complaint, however, overlooks the fact that for many years the legislatures of our several states have been regulating legal procedure until there remains at the present time very little of the old common law forms to which are attributed the evils of delay and over-technicality. The common law rules, while in many instances over-refined and technical, nevertheless formed a logical and related system based on general principles and with a well-defined aim. The reform of common law pleading, unfortunately, did not stop at simplification and the removal of over-technicality, but substituted arbitrary rules in endless detail, based on no principle whatever. A long course of judicial construction was the necessary consequence; but, to make matters worse, the legislatures have continued to pass "practice acts" at every session changing the rules relating to some branch of procedure. It is obvious that with this continual change going on numerous questions in regard to procedure inevitably arise. It is to this continual legislative tinkering with the details of procedure that over-technicality is due where it exists at present, rather than to any vestiges of the refinements of common law pleading. It is a hopeful sign that this is beginning to be recognized. In his presidential address at the last annual meeting of the New York State Bar Association Senator Elihu Root said:

"The original Field Code of Procedure of 1848 contained 391 sections and was comprised in 169 of the small, loosely printed pages of the session laws of that time. The last edition of our present code at which I have looked contains 3,384 sections, a large proportion of them dealing with the most minute details. It is doubtless true that some provisions of substantive law have found their way into this enormous mass of statutory matter and that some special branches of procedure are covered by the present code which were not included in the original

code. Nevertheless, the comparison between the two statutes reveals plainly the fact that for many years we have been pursuing the policy of attempting to regulate by specific and minute statutory enactment all the details of the process which, under a multitude of varying conditions, suitors may get their rights.

"Such a policy never ends. The attempt to cover, by express specific enactment, every conceivable contingency inevitably leads to continual discovery of new contingencies and unanticipated results requiring continual amendment and supplement. Whatever we do to our code, so long as the present theory of legislation is followed the code will continue to grow and the vast mass of specific and technical provisions will continue to increase. I submit to the judgment of the profession that the method is wrong, the theory is wrong, and that the true remedy is to sweep from our statute books the whole mass of detailed provisions and substitute a simple practice act containing only the necessary fundamental rules of procedure, leaving all the rest to the rules of court. When that has been done the legislature should leave our procedure alone."

The principles which should be fundamental to a system of procedure adapted to our substantive law and methods of trial are fairly well known and have been developed by experience, but so chaotic has been our procedure in this country of recent years, due to legislative interference, that there may not at once be agreement as to them. Whether or not the present craze for detailed legislation can be overcome for some time in the future, the attempt to do so cannot too soon be begun. E. L.

AN IMPORTANT REFORM IN FEDERAL PROCEDURE.

In a previous issue of the JOURNAL attention was called to a bill prepared by a committee of the American Bar Association, and endorsed by that body, designed to diminish the abuse of reversals and otherwise improve the administration of justice in the federal courts. We are glad to be able to say that the more important parts of this bill were passed by Congress at the recent session and are now law. The law provides that:

"No judgment shall be set aside, or reversed, or new trial granted, by any court of the United States in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error com-